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LANGDELL AND THE LAW SCHOOL

WHEN, in conversation, I first proposed to Mr. C. C. Langdell of the New York Bar that he become the Dane Professor in the Harvard Law School, I saw that the proposal attracted him strongly. He apparently wished to teach law rather than practice it, but to teach it in a new way. He called my attention to the obvious fact that he was a new kind of candidate for a professorship in the Harvard Law School, and expressed a good deal of doubt as to whether he could be elected. He was right in both respects; but clearly he had in mind some reform in legal education, some reconstruction of the Law School which I much wished to hear about, having some visions of my own about educational reform. He was distinctly attracted by the fact that it was the Dane professorship that was vacant, the professorship which Nathan Dane, eminent lawyer, legal author, and politician had founded by the gift of ten thousand dollars in 1829, and which Joseph Story had held for sixteen years thereafter. It was Dane, too, who in 1832 provided the growing school with an adequate building for the accommodation of its students and its library. When Dane founded his professorship, he provided that the lectures delivered on the foundation should be published. This provision Langdell thought a very wise one; and it accorded with his own purposes and anticipations. On the whole, my proposal fell in with Langdell's views of life, and he soon accepted the risks of the unusual candidature.

The Corporation consented, though with some reluctance, to elect Mr. Langdell Dane Professor, probably out of some general purpose to support their young President — all the members of the Board were old enough to be my father — whom they had placed in a difficult position in spite of much public and private criticism. The Board of Overseers in their turn consented to the election, but with even more reluctance, which was overcome mainly by the testimony of James C. Carter and Joseph H. Choate of the New York Bar to the effect that Langdell was a man of prodigious learning in the law and of remarkable industry, and that he had a legal mind of extraordinary acumen and sagacity.



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CLASS OF 190



BRANNAN WILLISTON LANGDELL
GRAY SMITH WAMBAUGH
OF 1901

The next step was to make him Dean of the School. A new statute required that the Faculty of each professional school should elect from among its members a dean, whose duty it should be to keep the records of the Faculty and prepare its business. At the Faculty meeting called for this purpose there were present President Eliot, Professor Washburn, who had been for fourteen years one of the three professors who really managed the School, Professor Nathaniel Holmes, who had been a professor in the School for only two years and had never taken any active part in its administration, and the new Dane Professor. So far as can now be ascertained, there never had been any Faculty meeting in the Law School with a record of proceedings. Professor Washburn testified that he had never heard of one. The intervention of the President in any Law School proceedings was also unexampled. A few months after I entered on the duties of President, I stepped into Professor Washburn's office in Dane Hall to ask him some question about the state of the School. At sight of me Professor Washburn held up both hands and exclaimed, "This is the first time I have ever seen a President of the University in this building." Presidents Kirkland and Quincy took some interest in the Law School because of their warm friendship for Judge Story; but no subsequent President and no earlier one had manifested an interest in the School. The meeting was rather an awkward one. The President stated its object — to elect a Dean. Now deans were rather recent creations in Harvard University. The Medical School had had a Dean since 1864; but his chief function was friendly and charitable intercourse with the students. Professor Gurney had just been appointed Dean of the College Faculty; but the nature of his functions and influence was not yet visible. Whether the functions of the Dean of the Law School were to be chiefly clerical and eleemosynary or not was not clear to Professors Washburn and Holmes; but at any rate neither of them desired the office. The only candidate seemed to be Professor Langdell, who had only just come to the School; but Professor Langdell himself said nothing. Professor Washburn, after explaining his complete ignorance of such matters, moved that Professor Langdell be elected Dean. This motion was carried by the votes of Professors Washburn and Holmes, Professor Langdell not voting. Then began in 1870 a process of conservative experimentation and construction in the Law School which is not yet finished. The phrase

in the new statute that the Dean should prepare the business of the Faculty gave the new Dean all the powers he needed.

The first subject Dean Langdell was called upon to deal with was the construction of a new curriculum for the School, divided into first and second year courses. To fill out this new programme required some additional courses, which the President and the Dean coöperated to procure. A similar reform was going on in the Medical School for like reasons. For three years the needed enlargement was procured by appointing eminent lawyers at the bar or on the bench to give instruction on special subjects in relatively short courses. Eight such lecturers were appointed during the first three years of the new régime, of whom three, Messrs. Bradley, Gray, and O. W. Holmes afterward became regular professors. Professor Langdell was distrustful of this method of increasing the instruction in the School; because he held that the fact that a man had become a distinguished lawyer or a respected judge did not prove that he knew how to teach law, or indeed that he could learn to teach law. He was inclined to believe that success at the Bar or on the Bench was, in all probability, a disqualification for the functions of a professor of law. He cordially assented, however, to the appointment of Messrs. Gray and Holmes; because he thought them genuine scholars in the law, capable both of discriminating research and of accurate exposition. President Eliot had seen at the Medical School that a distinguished practitioner of medicine or surgery might easily prove to be a poor teacher; although he might continuously interest medical students as an example of professional success. In the Law School he thought it prudent to provide for a few years the best possible examples of the old-fashioned method of teaching law, partly to break the force of the flood of criticism which was pouring in from members of the American Bar, but chiefly that the good students in the School might have the best possible opportunity to compare the old method with the new.

Professor Langdell's views concerning teachers of law received a striking illustration when in 1873-74 James Barr Ames, a recent graduate of the School, who had had no experience in practice, was appointed Assistant Professor of Law. Both the Corporation and the Overseers consented to this appointment with reluctance; and in all probability their consent was given only because the appointment was one limited by statute to a term of five years. The

President was prepared to support Dean Langdell in this bold adventure; because he had already seen that there were parts of professional teaching which young men could do better than old men, even though the young men had had but little professional experience. Before the expiration of the five years Mr. Ames was appointed full Professor of Law with general approbation, so conspicuous was his success.

As soon as Dean Langdell had completed his reorganization of the courses of study in the Law School, and put into operation his progressive programme covering two years, he turned his attention to the condition of the School's library, and set about, first, providing protection and safe management for the library, and, secondly, enlarging it. Langdell knew well the lack of supervision of the library before 1870. He had been himself its student-librarian for several years. He had himself used the books of the library with complete freedom, especially in the preparation of his valuable notes to Parsons on Contracts. He knew what extensive losses and damages the library had suffered because of the lack of supervision and the carelessness of the students. He regarded a well-selected, well-kept, and ample library as the one essential piece of apparatus for any law school, and especially for the Harvard Law School he hoped for. It had been the practice of the School to supply all the students gratuitously with copies of the textbooks they used. To abolish this costly practice was one of Langdell's first measures. He soon procured the services of a permanent librarian, who should be in constant attendance in the library. These measures for the protection and better ordering of the library were taken within a few months of Langdell's becoming Dean; but it was not till 1873, when Mr. John Hines Arnold became librarian, that the future of the Law School library conducted on Langdell's principles was assured.

As the case system came into use, another principle with regard to the conduct of the library had to be often applied. Duplicates had to be supplied of reports and other books which were in frequent demand. With a special appropriation made by the Corporation much was done during the year 1870-71 to improve the fittings of the room occupied by the library, to repair the bindings, and fill the numerous gaps in the series of important reports which the School had acquired during its first fifty years. When Mr.

Arnold became librarian in 1873 the librarian and the Dean worked together in perfect harmony, and indeed in the same spirit; and both lived to see the library increase greatly in number of volumes, serviceableness to the students and teachers, and pecuniary value.

To Professor Langdell books had a kind of sacrosanct character. They were to be handled carefully, preserved from dust and heat, and never defaced by pencil marks or words written on the margins of the pages. Mr. Arnold shared these sentiments of the Dean, especially in regard to books which had been obtained at high cost and could not certainly be replaced. These feelings were very much injured when certain teachers in the Law School, who were writing books, contracted the habit of sending books direct from the School library to one of the Cambridge printing offices, in order that the type might be set directly from the printed book, instead of from copies of the passages the authors proposed to use. Inevitably the books came back to the library with some of their pages defaced with black finger-marks and other smooches, and in some instances with pages torn. This state of things being reported by the librarian to the Dean, the Dean made some mild suggestions that the offending authors do as he had done, — have passages they wished to quote copied. When he found that this proposition was regarded by the offenders as unreasonable and was wholly ineffectual, he came to the President's office one morning with a grave aspect indeed, and in his official capacity requested my aid. He regretted the necessity of asking me to intervene; but the evil was intolerable. I had some difficulty in convincing the offenders that the Dean was right, and that his request should be respected. This is the only instance I can recall in which Dean Langdell procured the enforcement of his wishes by an exercise of the President's authority. In general, he eagerly desired to convince his associates and his students by argument that his way of looking at measures or doctrines was right or sound.

The instructive story of the success of Professor Langdell's method of teaching law has been well told by competent witnesses in the Centennial History of the Harvard Law School. Professor Langdell and I waited patiently, but anxiously, for the verdict. The number of students declined more than either of us had expected, and the demonstration of success achieved in prominent law offices and in practice by graduates of the School, who had en-

joyed Langdell's system and thoroughly utilized it, came more slowly than we had anticipated. On the other hand, that demonstration, when it came, was accepted by the legal profession with surprising readiness.

Other restrictive measures, such as the requirement for admission to the School of the degree of Bachelor of Arts or its equivalent, had to be postponed somewhat, but not for long. Dean Langdell thought that English and American law should be studied by itself without admixture of other subjects, such as government, economics, international law, or Roman law; but he also wanted every law student to have had a preliminary training in a good secondary school and a good college. When Professor Ames wished to include in the purchases for the library many books on Roman law, Dean Langdell acquiesced reluctantly, but was ultimately convinced that a great law library should include even that somewhat remote or detached subject.

During this long struggle with adverse circumstances, and especially with severe criticism of the case method and its results, Dean Langdell never cared to defend himself in print or by public speech. He knew that there was only one way to refute criticism, namely, to exhibit the professional success of his disciples. His silence did not mean lack of confidence in his method; far from it. Even when the failure of his eyesight compelled him to modify his method in his own classroom, he remained sure of the superiority of his original case method to any other, although he could no longer use it successfully himself.

Professor Langdell had, I think, no acquaintance with the educational theories or practices of Froebel, Pestalozzi, Seguin, and Montessori; yet his method of teaching was a direct application to intelligent and well-trained adults of some of their methods for children and defectives. He tried to make his students use their own minds logically on given facts, and then to state their reasoning and conclusions correctly in the classroom. He led them to exact reasoning and exposition by first setting an example himself, and then giving them abundant opportunities for putting their own minds into vigorous action, in order, first, that they might gain mental power, and, secondly, that they might hold firmly the information or knowledge they had acquired. It was a strong case of education by drawing out from each individual student mental

activity of a very strenuous and informing kind. The elementary and secondary schools of the United States are only just beginning to adopt on a large scale this method of education, — a method which is not passive but intensely active, not mainly an absorption from either book or teacher but primarily a constant giving-forth. Professor Langdell's method resembled the laboratory method of teaching physical science, although he believed that the only laboratory the Law School needed was a library of printed books. His case system has been widely applied in this country to the teaching of clinical medicine and surgery, as a useful addition to the ordinary practice of teaching those subjects at the bedside of actual patients. The combination he used of the lecture and the recitation is capable of wide application in both primary and secondary schools and in colleges and universities. Indeed, the conference method used with small advanced groups in universities is an earlier example of his method, the merits of which have been recognized for at least a century wherever such groups have existed.

Langdell's disposition or character was singularly honest, just, candid, and serene; although he was also capable of indignation, quick and evanescent, or slow-gathering and persistent. He was a curious mixture of the conservative and the radical, having the merits of both. His relation to his wife, who was much younger than himself, and to her mother was so delicate and tender that it was a high privilege to witness it. About his own affairs he was reticent or reserved. Cut off in youth and manhood from the amusements and relaxations of most educated men, he took pleasure in the careful investment of his savings, as soon as he could make any. I was one of the few persons with whom he sometimes discussed investments; although he soon learned that, compared with him, I knew little about the subject. I heard from him something about farm mortgages in Iowa and other fertile western states. I found he held strong opinions about the security of the mortgage bonds of certain western railroads, and the insecurity of others, and that he enjoyed the careful researches which led him to these opinions. Such studies, however, were only the by-play of his mind. He was as successful there as he was in his other mental work; so that he left an estate whose amount surprised all his friends. He was as sagacious and far-seeing in this his sport as he was in his serious labors.

A striking characteristic of Professor Langdell was courage, both physical and moral. His moral courage was perfectly illustrated by his acceptance of the Dane professorship and his whole conduct as Dean of the Law School. His physical courage was illustrated by his going about alone on foot by day and by night in the streets of Cambridge, when he could see hardly anything, especially in the glare of bright sunshine. His daily walks between Austin Hall and his house were terrifying to onlookers, particularly after the advent of the automobile, but never to him. He would wait to cross the streets till his ears assured him that no horse or horse vehicle was very near; but his ears could not warn him in time of the rapid approach of a quiet automobile. Then he had to trust that the chauffeurs would see that a blind man was crossing the broad street. For several years he was quite unable to go alone on an unfamiliar path. This helplessness was a great trial to a man who had always been self-reliant in high degree; but he bore the calamity with unfaltering patience. As a teacher, Langdell was a great benefactor of the legal profession, and hence of every free and orderly community. As a man, he was worthy of all love and reverence.

Charles W. Eliot.

CAMBRIDGE, MASS.